

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3691 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 & 2 Yes. Nos. 3 to 5 No.

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RAJNAGR TEXTILES MILLS NO.1

Versus

TEXTILE LABOUR ASSOCIATION

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Appearance:

MR BR GUPTA for Petitioner  
MR KG VAKHARIA, SENIOR ADVOCATE AND  
MR DS VASAVADA for Respondent.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 23/02/98

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 27.3.1997 passed by the Industrial Court (Gujarat) at Ahmedabad in Appeal (IC) No.13/94 read with the order dated 12.1.1994 passed by the 6th Labour Court at Ahmedabad in Application No.859 of 1984. Respondent the Textile Labour Association had

filed an application under section 79(1) of the Bombay Industrial Relations Act, 1946 against the present petitioner i.e. Rajnagar Textile Mills No.1 for declaration that action of the mill company in respect of the loss of wages by the members of the Textile Labour Association be declared to be illegal being in breach of the agreement dated 24.5.1983 and that the mill company be directed to make good the monetary loss on account of not giving them employment as per agreement. It was alleged that the employees mentioned in the schedule were working in the sugarcane department and the mill company entered into an agreement dated 24.5.1983. According to this agreement badli workers mentioned in the schedule were to be given the work on the basis of average working days of the year 1981-82. Thereafter, the department has closed. It was agreed by the mill company that badli workers were to be adjusted in other sections of the mill company as department had been closed. The grievance is that this agreement was not followed despite the approach letter dated 14.5.1984. The mill company filed written statement contending that the application was not maintainable. It was also contested by the mill company that it had agreed to give work to the applicants who were badli workers on the basis of the average working days in the year 1981-82. The breach of agreement was denied. Receipt of the approach letter dated 14.5.1984 has also been denied. Before the Labour Court, the mill company did not lead any oral evidence nor did it produce any documentary evidence as has been recorded by the Labour Court in para 13 of its order dated 12.1.1994. The Labour Court after considering the evidence led by the employees found that the applicants badli workers had not been given work in other section of the mill company as per the agreement and there was nothing to show that the mill company had asked the badli workers to take up the work in any other section of the mill company. The Labour Court allowed the application and declared that the mill company had committed breach of the agreement dated 24.5.1983 and accordingly the mill company was directed to make good the monetary loss caused on account of the illegal act of the mill company and further direction was given to give work as per the agreement.

This order dated 12.1.1994 passed by the 6th Labour Court in Application No. 859 of 1984 was taken in Appeal under section 84 of the Bombay Industrial Relations Act, 1946. The Industrial Court, Gujarat at Ahmedabad decided this appeal (IC) No.13 of 1994 by a detailed and reasoned order dated 27.3.1997 and rejected the appeal.

These two orders have been challenged by Rajnagar Textile Mills No.1, unit of National Textile Corporation (Gujarat) through this Special Civil Application mainly on the grounds that since 1992 onwards the petitioner mill is lying closed and that it is obliged to pay idle wages even to its regular employees employed on permanent basis and that NTC (Gujarat) has been declared as Sick Industrial Company by BIFR vide its order dated 16.3.1993 under section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, and therefore, no legal proceedings can be initiated against the corporation or its unit mills for effecting recovery of any dues by whatever name called without the prior permission of the competent authority or appellate authority constituted under the said Act.

Mr.Gupta appearing for the petitioner company has laid much stress on the provisions of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 and has submitted that the members of the respondent association cannot enforce any recovery against the petitioner company in view of the provision of section 22. In support of his submission Mr.Gupta has placed reliance on an order dated 9.7.1997 passed by the Single Bench of this Court in Special Civil Application No. 1151 of 1995 and the interim order dated 29.6.1995 passed by the Division Bench while admitting Letters Patent Appeal. This order dated 29.6.1995 has been passed in Civil Application No. 931 of 1995 in Letters Patent Appeal No.175 of 1995 and it is given out by Mr.Gupta that the Letters Patent Appeal is pending before the Division Bench. Mr.Gupta has also placed reliance on the decision of the Hon'ble Supreme Court in the case of Maharashtra Tubes Limited Vs. State Industrial & Investment Corporation of Maharashtra Ltd.and Another reported in 1993 (2) SCC Pg.144 and AIR 1990 SC Pg.1017 in the case of The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others.

Mr.Vasavada appearing for the respondent association has submitted that admittedly the mill company had been declared as sick unit by an order dated 16.3.1993 but no such objection with reference to section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 was taken by the mill company either before the Labour Court when the order dated 12.1.1994 was passed or before the Industrial Court when the order dated 27.3.1997 was passed. It has been further submitted by Mr.Vasavada that claim with regard to the loss of wages cannot be defeated with reference to the provisions of section 22 and the petitioner mill company has failed to

point out any legal infirmity so far as the orders passed by the Labour Court and the Industrial Court of Mehsana are concerned. He has placed reliance on the decision dated 28.4.1997 of the Bombay High Court rendered in the case of National Textile Corporation (South Maharashtra) Vs. B.N.Jalgaonkar & Others which has been decided on the basis of the Supreme Court decision referred therein. Mr.Vasavada has made reference to Judgments To-day 1997(3) SC Pg.660. He has placed reliance on 1995 Lab.I.C.Pg.2200 a decision of the Bombay High Court as also 1997(1) LLJ Pg.1059 yet another decision of the Bombay High Court. Mr.Vasavada has also referred to a Division Bench decision dated 22.1.1992 whereby Special Civil Applications No. 7041 to 7068 of 1991 were decided and the Division Bench declined to interfere with the interim order passed by the Labour Court rejecting the application for staying the proceedings in reference. Mr.Vasavada has also referred to a decision of the Single Bench of this Court reported in 28(2) GLR Pg.1204.

I have considered the submissions made on behalf of both the sides. First ground urged by Mr.Gupta is that the petitioner mill is virtually closed since 1992. This ground in fact, refers to the hardships faced by the petitioner company even for the purpose of making payment to the regular employees. This ground does not impress the Court for the simple reason that the incapacity with regard to the making due payment of wages does not and cannot impinge upon the validity of the orders passed by the Labour Court and Industrial Court, and therefore, in the Court's opinion the orders passed by the Labour Court and Industrial Court cannot be set aside on this ground. So far as the second ground based on the provisions of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 with regard to the suspension of legal proceedings is concerned I have gone through the various decisions on which reliance has been placed by the parties. While perusing the order dated 9.7.1997 passed by the Single Bench in the case of National Textile Corporation (Gujarat) Ltd. Vs. Municipal Corporation of City of Ahmedabad, it is found that National Textile Corporation had approached this Court straight way against the Municipal Corporation and Municipal Corporation was directed to approach the BIFR with proper application claiming its dues so that the recoveries can be made in accordance with law. It was in relation to the demand of the dues on account of the municipal taxes and therefore the Municipal Corporation was directed to approach the BIFR. This order cannot be treated as an authority for the purpose of scope of section 22 and the embargo which has been sought to be

pleaded on behalf of the petitioner. The order dated 29.6.1995 passed by the Division Bench in Civil Application No. 931 of 1995 is only an interim order and the Letters Patent Appeal is yet pending and therefore, this interim order passed by the Division Bench also cannot be treated as an authority on the scope of section 22. In the case of Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra (Supra) the Supreme Court had held that where an inquiry is pending under sections 16/17 or an appeal is pending under section 25 of the 1985 Act there should be cessation of the coercive activities of the type mentioned in section 22(1) to permit the BIFR to consider what remedial measures it should take with respect to the sick industrial company and this case was decided after considering the case between The Gram Panchayat and Another Vs. Shree Vallabh Glass Works Ltd and others (Supra). The Supreme Court held that the expression 'proceedings' in section 22(1) must be widely construed and it cannot be confined to legal proceedings understood in the narrow sense of proceedings in a court of law or a legal tribunal for attachment and sale of the debtor's property, notwithstanding the use of that expression in the marginal note. In M/s.Shree Chamundi Mopeds Ltd. Vs. Church of South of India Trust Association, AIR 1992 SC Pg.1439 which has been relied upon by Mr.Gupta it was held by the Supreme Court that eviction proceedings are not covered by section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. In the case of National Textile Corporation (South Maharashtra) Ltd. Vs. B.N.Jalgaonkar & Others, the Bombay High Court has considered the scope and ambit of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 and after considering the Supreme Court's judgment rendered in M/s. Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association and Deputy Commercial Tax Officer & Others Vs. Corromandal Pharmaceuticals & Others, reported in Judgment's To-day 1997(3) SC P.660 has observed that the question which came up for consideration before the Apex Court was whether the Sales tax dues should be recovered after company has been declared sick or a scheme has been framed under section 22 of the Act. The Bombay High Court has found that the Apex Court has held that section 22 would not bar such a recovery. There are no other observations in the said judgment to support the contention that the wages due to the workers are also barred by the provisions of section 22 and that the workers will have to approach the Board in respect of the said wages. The Bombay High Court has further considered that in case section 22 is invoked even in the case of the wages due to the employees it

would defraud the legitimate claim of the workmen for wages and other dues by not paying them in the first instance, forcing the workers to resort to other remedies under any of the applicable labour statutes and then pleading the bar in section 22(1). This is exactly the fact situation obtaining in the present case. The employees were first drawn to the remedy of moving application before the Labour Court. Thereafter the petitioner mill chose to prefer an Appeal before the Industrial Court and now the bar of section 22 is being pleaded against them before this Court so as to assail the order passed by the Labour Court and Industrial Court. It is not the case of the petitioner company that after National Textile Corporation was declared as sick unit in 1993 BIFR has evolved or sanctioned any scheme in this regard. Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 is reproduced as under :

"22. Suspension of legal proceedings, contracts, etc - [1] Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof ( and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

According to the language of this section no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any

security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

It is very clear that the pre-requisites or condition precedents set out in section 22(1) are totally wanting in the facts of the present case and there is no question of defeating claim with regard to the wages and work on the basis of the provisions of section 22. Despite the wide import of the word 'proceeding' as have been given by the Supreme Court in the judgment delivered in Maharashtra Tubes Limited case's (Supra) this Court does not find that the impugned orders passed by the Labour Court and the Industrial Court with regard to the due wages and the work with reference to the agreement dated 24.5.1983, can be set aside so as to defeat the claim of the respondent association. On the basis of the provisions of section 22 of the Act as aforesaid the impugned orders cannot be quashed and set aside and the embargo under section 22 does not apply to the cases where the claim is with regard to the wages and on the basis of the ratio of the Bombay High Court's judgment which has been rendered after considering Supreme Court judgment in the case of Deputy Commercial Tax Officer and others (Supra) this Court is of the considered opinion that proceedings with regard to the recovery of wages and in relation to work to the employees are not covered. Whereas the contention with regard to the very applicability of section 22 is not found to be of any substance, it is not necessary for this Court to consider as to whether the petitioner could raise contention based on section 22 for the first time before this Court although the same was not raised before the Labour Court and Industrial Court and it is held that embargo under section 22 is no impediment against the claim of the recovery of the wages as the cases with regard to the recovery of wages stand on entirely different footing and such claim stands on a different pedestal in the context of the scope of the word 'proceeding' under section 22.

This Court therefore does not find any merit in this Special Civil Application and the same is hereby dismissed and the Rule is hereby discharged. No order as to costs.

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